In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 1016

CHARLES W. JAMIESON, PETITIONER

v.

ANTHONY J. CELEBREZZE, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, *pro se*, seeks review of a court of appeals' judgment, entered on January 11, 1963, affirming a decision of the district court in an action for judicial review of a determination made by the Appeals Council of the Social Security Administration. On March 8, 1963, petitioner filed a "notice of appeal" with the court of appeals. On April 10, 1963, he filed a "jurisdictional statement" in this Court; and on April 12, 1963, a "notice of appeal" was received by this Court. Petitioner grounds his appeal on 28 U.S.C. 1252, claiming that the court of appeals has held an act of Congress unconstitutional. However, the decision of the court of appeals

did not pass upon the validity of a statute. Indeed, no question going to the constitutionality of an act of Congress was involved in the case at any stage. Since this is not a proper case for appeal, we are responding to the papers as we would to a petition for a writ of certiorari.[1]

Petitioner began to receive old-age insurance benefits under Section 202 of the Social Security Act, 42 U.S.C. 402(a), in 1950, the year he became 65 years old.[2] In 1956, the Social Security Administration determined that petitioner had excess earnings for the year 1955, as defined in Section 203(f) of the Social Security Act, 42 U.S.C. 403(f), and thus had not been entitled to benefits during that year (R. 6; Pet. App. 25).[3] Pursuant to Section 203(b), 42 U.S.C. 403(b), the agency deducted from petitioner's 1956 benefits the sum of $531.00, which represented the amount of overpayment for the preceding year (R. 6; Pet. App. 25). The agency also determined that petitioner was not without fault in connection with the receipt of the incorrect payments during 1955, and that the deductions from his 1956 benefits

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[1] In addition, the papers would not be timely if construed as an appeal. The notice of appeal was filed in the court of appeals 56 days after the entry of judgment.

[2] Many of the facts concerning petitioner's claim for social security benefits which are not contained in the limited record before this Court can be found in the district court's opinion in *Jamieson* v. *Folsom*, 170 F. Supp. 858 (N.D. Ill.).

[3] "R." references are to petitioner's appendix in the court of appeals, which is part of the record in this Court. "Pet. App." references are to the appendix to the "Jurisdictional Statement" filed in this Court.

were therefore not barred by Section 204(b) of the Act (Pet. App. 25).[4]

Thereafter, in accordance with Section 205(g) of the Act, 42 U.S.C. 405(g), petitioner instituted a timely action for judicial review of the Social Security Administration's decision (R. 1–3; Pet. App. 24–25). The district court, on March 11, 1959, affirmed the agency determination that petitioner had excess earnings in 1955 and had received the overpayment of benefits in question, holding that it was consistent with the provisions of the statute and supported by substantial evidence. The district court further held, however, that the administrative determination that petitioner was not without fault in receiving the overpayment was not supported by substantial evidence. It accordingly reversed the latter determination and remanded for further administrative proceedings on the question of petitioner's fault or lack of fault (Pet. App. 25–26). *See Jamieson* v. *Folsom*, 170 F. Supp. 858 (N.D. Ill.). Neither petitioner nor the government took an appeal from this decision, although petitioner, between March 11, 1959, and December 31, 1959, filed various motions in the district court (all of which were denied) seek-

[4] Section 204(b) of the Social Security Act, 42 U.S.C. 404(b), provides:

"There shall be no adjustment or recovery by the United States in any case where incorrect payment has been made to an individual who is without fault (including payments made prior to January 1, 1940), and where adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience."

ing to compel administrative action on his claim (R. 7–17; Pet. App. 26).[5]

Following the district court's decision of March 11, 1959, the Social Security Administration held a hearing pursuant to the remand (Pet. App. 26). On March 31, 1960, it again found that petitioner was not without fault and that the deductions from his 1956 benefits were proper (R. 18–21; Pet. App. 26). Petitioner acknowledged that on April 2, 1960, he received a copy of this second administrative decision (R. 19).

Although Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), requires judicial review of a final administrative decision to be sought within 60 days, petitioner filed no pleading in the district court between March 31, 1960, and November 13, 1961 (Pet. App. 26). On the latter date, about one and a half years after the expiration of the 60-day period, he filed a petition for review (R. 18–20; Pet. App. 26). The district court, on April 19, 1962, dismissed this action (R. 25); and, on January 11, 1963, the Court of Appeals for the Seventh Circuit affirmed the dismissal (Pet. App. 24–27), holding (Pet. App. 27): "As plaintiff did not file his action to review the Secretary's decision of March 31, 1960, within the 60 days

[5] Petitioner appears to contend that the district court's order of March 11, 1959, was interlocutory, and, therefore, the court retained jurisdiction of the cause. However, it is clear that the order was final. See Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), which provides that the district court may enter a judgment affirming, modifying, or reversing the administrative decision, with or without remanding for a rehearing, and that this "judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions."

provided by the statute, his right to such review ceased to exist." See *Jamieson* v. *Celebrezze*, 311 F. 2d 506 (C.A. 7).

The holding that the present suit was untimely is clearly correct and the petition to this Court should be denied.

Respectfully submitted.

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MAY, 1963.

U. S. GOVERNMENT PRINTING OFFICE 1963